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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,920	11/07/2001	Clemente Conde	EASY:022	9978

7590

08/05/2002

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EXAMINER

NGUYEN, SON T

ART UNIT

PAPER NUMBER

3643

DATE MAILED: 08/05/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/039,920

Applicant(s)

CONDE, CLEMENTE

Examiner

Son T. Nguyen

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2001.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 November 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 2. 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "18" has been used to designate both transition region and border segment. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: on page 6, line 18, "look" should be changed to ---loop---.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. **Claims 1-4,10-13,15-17** are rejected under 35 U.S.C. 102(b) as being anticipated by Martensen (US 2,600,666).

For claim 1, Martensen discloses a fence that is capable of being a landscape border 26,20,21,23,22 comprising a first end 26 for insertion into the ground; a transition region (from ref. 22 to ref. 23 is consider the transition region) coupled to the first end; a second end 23 coupled to the transition region; and a connection feature 22 located

proximate the second end, the connection feature formed to connect with another landscape border segment at varied locations between the transition region and the first end.

For claim 2, Martensen further discloses the connection feature is formed to connect to the other landscape segment anywhere between the transition region and the first end (figs. 1 & 6, where ref. 22 connects to another segment near ref. 21).

For claim 3, Martensen further discloses the connection feature is formed to connect to the other landscape segment at varied angle (see fig 5, the connection feature 22 allow each segment to be connected at varied angle).

For claim 4, Martensen further discloses the connection feature is formed to connect to the other segment at any angle (as shown in fig. 5) except for angles in which the landscape border segments would physically overlap (if the segments overlap, then the connection feature 22 cannot form angles between segments because the segments cannot be connected since they have to be a distance apart and not overlapping each other.)

For claim 10, Martensen discloses a fence that is capable of being a landscape segment comprising a rod-like member 26,20,21,23,22 having first 26 and second 23 ends, the first end being for insertion into a landscape feature, the first end orientates in a first axial direction (vertical axis) and the second end orientated in a second axial direction (horizontal axis) and the first and second axial directions are different; a transition region (fig. 6, from ref. 21 to ref. 23 is consider the transition region) where the first axial direction transitions to the second axial direction; and a connector 22 located

at the second end and configured to engage another rod-like segment of another similarly configured landscape segment.

For claim 11, Martensen further discloses at least a portion of the rod-like member has circular cross-section (see fig. 9 for the circular cross-section).

For claim 12, Martensen teaches in col. 1, lines 30-33, that the rod-like member can be square which is non-circular cross section.

For claim 13, as define in the above, the first axial direction is vertical and the second axial direction is horizontal, therefore, the two directions are 90 degrees offset from each other.

For claim 15, Martensen further discloses a connection region (such as at ref. 22 shown in figs. 1,2 or 3 at various location) is formed between the transition region and the first end, the connection region may engage a connector 22 of an adjacent landscape segment at a plurality of different locations within the connection region to enable various relative heights between the two landscape segments (figs. 1-3 show various height of segments).

For claim 16, Martensen's connector 22 may engage a rod-like member of an adjacent similarly configured landscape segment at a variety of angles, as shown in fig. 5.

For claim 17, please see explanation for claim 15.

Claim Rejections - 35 USC § 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. **Claims 5,6,9,20,21** are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen (as above) in view of McNeill (US 6,386,517 B1).

For claim 5, Martensen teaches the segment being made out of wire but is silent about the wire being tubular metal wire. McNeill teaches a garden border fencing system in which he employs tubular metal material to make his landscaping segment 405 (col. 9, lines 14-18 & col. 10, lines 55-60). It would have been obvious to one having ordinary skill in the art at the time the invention was made to employ a tubular metal material as taught by McNeill to make the wire of Martensen in order to reduce material cost.

For claim 6, the tubular metal landscape segment of Martensen as modified by McNeill has a point at the first end (near ref. 26 of Martensen).

For claims 9 & 20, Martensen is silent about a decorative feature coupled to the rod-like member. In addition to the above, McNeill further discloses the landscape segment comprising a decorative feature 401 coupled to a rod-like member 101 for ornamental purpose (col. 10, lines 27-35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple a decorative feature as taught by McNeill on the rod-like member of Martensen in order to enhance the appearance of the landscape segment.

For claim 21, McNeill further teaches the decorative feature 401 being coupled to a transition region (near ref. 109) of the rod-like member. It would have been obvious to one having ordinary skill in the art at the time the invention was made to couple the

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decorative feature of McNeill in the area of the transition region of the rod-like member of Martensen as modified by McNeill to define a logical ending point on the landscape segment (col. 10, lines 30-35).

7. **Claim 7** is rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen as modified by McNeill as applied to claims 1,5 above, and further in view of Quinn (US 2,673,072). Martensen as modified by McNeill (emphasis on Martensen) further discloses that the connection feature is formed by flattening the rod member (col. 4, lines 1-5) and McNeill teaches the tubular metal material. However, Martensen as modified by McNeill is silent about the connection feature being a hook formed by bending and flattening the tubular metal material. Quinn teaches wire fence comprising a rod member 10 that is bent at an end 21 to create a hook 22 for connection purpose (col. 2, lines 51-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace a known type of connection (the lug portion 22 of Martensen) with another known type of connection (the bent hook of Quinn), especially when both types of connection produce the same result, i.e. to connect one element to another element. Martensen as modified by McNeill and Quinn does not teach a hook formed by flattening the metal rod member. It would have been an obvious substitution of functional equivalent to substitute a non-flattened bent hook as taught by Martensen as modified by McNeill and Quinn with a flattened bent hook as claimed by applicant, since it would perform the same function recited by the applicant; i.e. to connect one element to another element.

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8. **Claim 8** is rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen as modified by McNeill as applied to claims 1,5 above, and further in view of Miller (US 899,605). Martensen as modified by McNeill is silent about the transition region comprises a curved loop structure formed in the tubular metal material. Miller teaches a wicket fence comprising a rod member 1 having first (the end that inserts into the ground) and second 3 ends, and a transition region (anywhere before ref. 3 to below ref. 2 but not to the first end) coupled to the first end, the transition region having a curved loop structure 2 for connecting another rod member 7 and to enhance the fence appearance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form a curved loop structure as taught by Miller in the rod-like member of Martensen as modified by McNeill in order to enhance the appearance of the landscape segment and to provide another connection area/point for another segment. Note, applicant fails to explain the criticality of having a curved loop structure at the transition area. In addition, page 6 of the specification appears to teach that the device does not have to include the loop structure; instead, it can have a curved structure at the transition region, which Martensen teaches.

9. **Claim 14** is rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen (as above) in view of Quinn (US 2,673,072). Martensen's connector is a eyelet or lug portion 22 but not a hook. Quinn teaches wire fence comprising a rod member 10 that is bent at an end 21 to create a hook 22 for connection purpose (col. 2, lines 51-53). It would have been obvious to one having ordinary skill in the art at the time the invention was made to replace a known type of connection (the lug portion 22

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of Martensen) with another known type of connection (the bent hook of Quinn), especially when both types of connection produce the same result, i.e. to connect one element to another element.

10. **Claims 18,19** are rejected under 35 U.S.C. 103(a) as being unpatentable over Martensen (as above) in view of Miller (US 899,605). Martensen is silent about the transition region comprises at least one loop. Miller teaches a wicket fence comprising a rod member 1 having first (the end that inserts into the ground) and second 3 ends, and a transition region (anywhere before ref. 3 to below ref. 2 but not to the first end) coupled to the first end, the transition region having a curved loop structure 2 for connecting another rod member 7 and to enhance the fence appearance. It would have been obvious to one having ordinary skill in the art at the time the invention was made to form at least one loop as taught by Miller at the transition region of the rod-like member of Martensen in order to enhance the appearance of the landscape segment and to provide another connection area/point for another segment. Note, applicant fails to explain the criticality of having a curved loop structure at the transition area. In addition, page 6 of the specification appears to teach that the device does not have to include the loop structure; instead, it can have a curved structure at the transition region, which Martensen teaches.

11. The following prior arts are made of record to provide the best available relevant examples of a landscape border segment: Oberwerger teaches a fence unit with decorative features. Watanabe teaches employing decorative member on a garden fence. Baldwin & Pugh teach a plant support made out of wire having multiple loops for

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decorative purpose. Brining teaches section fence having a rod member connect to another rod member by eyelet or connection feature. May, Jr. et al. teach folding fence. Horrocks teaches self locking wire picket made out of twisted wire member having connection features to connect to another like picket.

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is (703) 305-0765. The examiner can normally be reached on Monday - Friday from 9:00 a.m. to 5:00 p.m. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon, can be reached at (703) 308-2574. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

A handwritten signature in black ink, appearing to read 'Son T. Nguyen', with a long horizontal flourish extending to the right.

Son T. Nguyen, *STN*
Patent Examiner, GAU 3643
July 30, 2002